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January 7, 1993

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VIA FEDERAL EXPRESS

Ms. Donna M. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Mail Stop 1170
Washington, D.C. 20554

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JAN - 8 - 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: GEN Docket No. 90-314 & ET Docket 92-100:
Personal Communications Services

Dear Ms. Searcy:

Transmitted herewith, on behalf of Teleport Denver Ltd. ("TDL"), are an original and six (6) copies of its Reply Comments in the above-referenced proceeding.

Questions and copies of all correspondence should be directed to undersigned counsel.

Very truly yours,


Harsha Krishnan

KHK/tmf

Enclosures

KHK.WP\Pleading\TDL.113

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Before the
FEDERAL COMMUNICATIONS COMMISSION FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554 OFFICE OF THE SECRETARY

In the Matter of

Amendment of the Commission's
Rules to Establish New Personal
Communications Services

GEN Docket No. 90-314
ET Docket No. 92-100

RM-7140, RM-7175, RM-7617
RM-7618, RM-7760, RM-7782
RM-7860, RM-7977, RM-7978
RM-7979, RM-7980

PP-35 through PP-40, PP-79
through PP-85

To: The Commission

REPLY COMMENTS OF TELEPORT DENVER LTD.

TELEPORT DENVER LTD.

HOPPER & KANOUFF, P.C.

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Its Attorneys

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To: The Commission

REPLY COMMENTS OF TELEPORT DENVER LTD.

Teleport Denver Ltd. ("TDL"), by its attorneys, hereby submits its Reply Comments to the Notice of Proposed Rulemaking and Tentative Decision ("NPRM") in this proceeding. In support of its Reply Comments, TDL respectfully states:

I. Introduction

In its initial comments, TDL, a competitive access provider ("CAP"), endorsed the Commission's regulatory objectives of universality, speedy deployment, diverse services and competitive delivery of Personal Communications Services ("PCS"). To attain and maintain these goals, the PCS regulatory framework must foster and sustain effective competition between PCS providers and between PCS and other telecommunications

services. National consortia licensing, proposed by several parties, will further the Commission's objectives while enhancing the competitiveness of PCS. In addition, eligibility restrictions on LECs and existing cellular providers are essential to assure vigorous competition between PCS providers and existing cellular carriers, as well as to preclude anticompetitive conduct by existing cellular carriers and LECs.

II. National Consortia Licensing

MCI Telecommunications Corp. ("MCI") and others have proposed that the Commission award PCS licenses to three national consortia, rather than adopting a variation of the cellular regional licensing procedures. The consortia would have a network manager as well as numerous independent local PCS providers. Each consortium would select its members, allocate service areas, and establish national specifications. TDL views this national consortia approach as much more efficient than a market-by-market scheme. The consortium approach will minimize regulatory and administrative costs and will deliver the benefits of competition and new technology to consumers more rapidly.

This national consortia licensing plan would significantly reduce the Commission's administrative burden. The members of the national consortia themselves would prescreen potential PCS providers. Since the competence of the local PCS providers will determine the viability of the consortium, the consortium has a

strong strong incentive to scrutinize the technical and financial qualifications of potential members. Since each consortium would confirm that potential members were bona fide and capable service providers, this approach would also discourage speculation in and brokering of licenses. This self-selection process eliminates the need for the Commission and its staff to process and review the immense number of PCS license applications. Since all consortia membership is subject to final Commission approval, the Commission would retain its authority over licensee selection.

TDL opposes the lottery process for several reasons. A lottery process, especially when coupled with a substantial filing fee, will restrict, if not bar, smaller, innovative firms from participating in the PCS market. The lottery process effectively requires potential licensees to file multiple applications for different potential markets, thereby levying a significant financial burden on smaller licenses. Furthermore, the lottery process inherently encourages speculative applications, especially when licensees may freely transfer their licenses. Some parties, such as US West Communications, Inc. ("USWC") argue that substantial filing fees are the only way to deter speculative applications. See USWC Comments at 17. Such filing fees, however, pose a substantial impediment to smaller providers, who lack the financial resources of the Regional Bell Operating Companies ("RBOCs"). Consequently, a lottery will perpetuate the status quo, and bias the PCS

licensing process in favor of large, well-established firms, particularly the RBOCs.

In contrast, the consortium process more efficiently and expeditiously prevents speculative applications, as the open and competitive process of forming a consortium will eliminate parties not genuinely interested in and capable of providing service. The process would be self-enforcing, and would not require significant, if any, regulatory oversight.

TDL also observes that the national consortia will foster both local participation and diversity of providers. TDL previously opposed nationwide service areas because such service areas would exclude all but a few very large firms. However, under the national consortia approach, smaller firms could enter the PCS industry at lower start-up costs than would be possible under a cellular-like system. Through discussions and negotiations with other firms and the various consortia, a small firm could more efficiently and economically find its niche in the industry, without the time and expense of preparing multiple applications for different potential markets. Furthermore, the consortia can tailor local service areas for smaller providers. To ensure the participation of diverse and numerous PCS providers, TDL advocates adoption of ownership diversity criteria, such as those proposed by MCI. See e.g., MCI's Comments at 9 n.6.

The consortium approach will speed the implementation of PCS. Since the Commission need not select an individual

licensee for each market, virtually all major markets will be authorized simultaneously. Moreover, with each local PCS provider focusing on its own service area, service can be implemented rapidly and concurrently. Thus, consumers will soon receive the benefits of the new service, and of competition.

The consortium approach will simplify the process of developing and enforcing standards for interoperability and interconnection. The three consortia will contribute the expertise of their varied membership. At the same time, the Commission can obtain a consensus on standards with only three parties more easily than with the dozens, if not hundreds of individual interests, under a market-by-market licensing methodology.

III. Eligibility of LECs and Existing Cellular Providers

Many LECs have argued that they should be allowed to provide PCS within their own serving areas. For example, USWC argues that:

1. PCS and cellular are different services, and a cellular provider should not be precluded from offering PCS, see USWC Comments at 24;
2. Non-structural safeguards will prevent any anticompetitive behavior, id. at 27; and
3. Barring LECs would deny the public the benefits of the established carrier's experience and facilities. Id.

A. Service Differentiation.

Although PCS and cellular may use different technologies, the services are very similar from a functional perspective. Consumers will probably see no practical difference between the two services, and will consider them interchangeable. Thus, customers, except for a few with highly sophisticated needs, will perceive both cellular and PCS as mobile alternatives to conventional telephone service.

If any and all interested firms could enter this high-tech alternative market, there would be no problem with LECs or cellular carriers providing PCS. However, the limited availability of the radio frequency spectrum restricts open market entry. Consequently, the Commission must allocate this valuable natural resource to further the Commission's objective of ensuring diverse providers and competitive delivery of PCS. Furthermore, the Commission should consider the advisability of granting such a scarce natural resource to parties already controlling bottleneck facilities.

Under the current regulatory environment, areas are served by a single LEC and at most two cellular carriers. Moreover, in most major markets, the LEC partially, if not completely, owns one of those two cellular carriers.¹ Assuming three PCS licenses per market, each area will then have at most five

¹USWC argues that LECs do not have access to cellular spectrum because wireline cellular licensees are often limited partnerships, with multiple ownership. However, the LECs' ownership interest still provides an incentive for anticompetitive conduct.

providers of mobile alternatives to basic local telephone service. If the existing cellular carriers received PCS licenses, or later obtained them through purchase or merger, the five potential alternative franchises would be controlled by only three entities: the two incumbent cellular carriers and a single new PCS provider. Apart from concerns about anticompetitive conduct, obviously a market comprised of five firms will be more dynamic and much more likely to bring new services and the benefits of competition to consumers than a market consisting of three firms, two of which are well established and have a major investment in pre-existing technology.

B. Competitive Safeguards

In any market with limited entry, it is important to ensure that no single firm has market power or can act in an anticompetitive manner. There is a natural tendency for any firm to try to obtain as large a market share as possible, by using any available advantage. LECs have very strong market position as the monopoly provider of basic local telephone service and as one of two cellular providers. In addition to the market power derived from those public franchises, the LEC has the ability to favor its own PCS subsidiary in the provision of service, and the graver potential for inadvertent or deliberate cross-subsidization of highly competitive personal communications services with profits from monopoly services.

C. LEC Experience and Facilities

Prohibiting LECs or cellular carriers from providing PCS in their current service areas in no way denies the public the benefit of LEC experience or existing facilities. There have been no proposals to prevent a LEC from providing PCS outside its monopoly franchise area. With any given service area open to entry by at least six other RBOCs and many other major independent LECs, there would certainly be no shortage of available experience and expertise.

Fair and equitable interconnection tariffs will insure that the LEC networks are fully available to support PCS infrastructure requirements, while at the same time providing a flow of contribution from the PCS providers to the local network. This will provide the benefits of the network and LEC experience to consumers without the potential of anticompetitive abuse of monopoly power.

In summary, prohibiting the provision of PCS by LECs or cellular carriers within their current serving areas will provide all of the benefits and none of the potential liabilities of allowing these firms into the market.

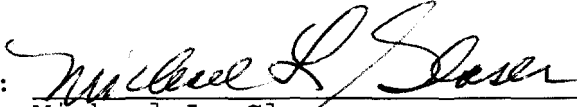
IV. Conclusion

Teleport Denver Ltd. advocates adoption of the national consortia proposal, which will reduce the Commission's administrative burden, foster participation by numerous and diverse local providers, and accelerate implementation of PCS.

The Commission must also restrict the eligibility of LECs and existing cellular providers as stated above to assure the development of PCS as an effective competitor to cellular service.

Respectfully submitted,

TELEPORT DENVER LTD.

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